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Comparative Study of Reconciliation after Divorce According to the Hanafi Opinion and the Hambali Opinion

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Abstract

The number of quarrels in a marriage that causes divorce, due to the unconsciousness of the husband and wife, finally they want to return to the marriage and want to fix their shortcomings with each other. In this study, the author will discuss how rujuk in the view of Madzhab Hanafi and Imam Hambali, and what are the similarities and differences between the two In this study, a type of library research is used, namely research whose object of study uses library data in the form of data source books. Reading, analyzing, and analyzing various existing literature, in this research the author uses a normative approach (juridical normative). The author finds that in Islamic law there are differences of opinion on how to refer to a wife who is referred after the fall of a raj'i divorce (one or two divorces). In the Hanafi Madzhab, the view is that referral is valid if the wife is in the iddah period, whether the referral is by saying sorih (clearly) without intention or in the form of kinayah (innuendo) must be with intention and it is also valid to refer to the wife with actions such as intercourse with intention or not, The Hambali Madzhab is of the view that reconciliation is valid if the wife is still in the iddah period, whether or not he reconciles her with words of sorih (clear) without or with words of kinayah (innuendo) because reconciliation is the cause of making intercourse permissible.
Keywords: *Rujuk, divorce, Hanafi Madzhab, Hambali Madzhab*

Abstrak

Banyaknya pertengkaran dalam suatu pernikahan yang menyebabkan terjadinya perceraian, dikarenakan ketidak sadaran pasangan suami istri, akhirnya mereka menginginkan untuk kembali pada jalinan pernikahan dan ingin memperbaiki kekurangan mereka satu sama yang lain. Penelitian ini, penulis akan membahas tentang bagaimana rujuk dalam pandangan Madzhab Hanafi dan Imam Hambali, serta apa persamaan dan perbedaan antara keduanya Dalam penelitian ini digunakan jenis penelitian pustaka (library research), yaitu penelitian yang obyek kajiannaya menggunakan data pustaka berupa buku-buku sumber datanya. Membaca, menelaah, dan menganalisi berbagai literatur yang ada, Dalam penelitian ini penulis menggunakan pendekatan normatif (yuridis normatif). Penulis menemukan bahwa dalam hokum islam terdapat perbedaan pendapat tentang cara rujuk kepada istri yang di rujuk setelah jatuhnya talak raj'i (satu atau dua talak). Dalam Madzhab Hanafi berpandangan bahwa rujuk itu sah dilakukan jika istri dalam masa iddah baik di merujuknya itu dengan ucapan sorih (jelas) tanpa niat atau dengan berupa kinayah (sindiran) harus dengan niat dan sah juga merujuk istri dengan perbuatan seperti jima' dengan niat atau tidak, dan perbuatan yang mengarah ke jima', Madzhab Hambali berpandangan bahwa rujuk sah dilkukan jika

istri masih dalam masa iddah, baik dia rujuknya dengan ucapan sorih (jelas) tanpa dan tidak dengan perkataan kinayah (sindiran) karena rujuk itu sebab dihalalkannya jima'.
Kata Kunci: *Rujuk, talak, Madzhab Hanafi, Madzhab Hambali*

INTRODUCTION

The religion of Islam is a religion that is beautiful and full of beauty which is arranged and arranged neatly and decorated by the shari'a that Allah has ordained and revealed to the best of human beings, namely the Prophet Muhammad in the form of the Al-Quran and his Hadith which form the basis of the Islamic religion with shariah.

The form of the beauty of God's law is a marriage that makes every human being on this earth a pair of men and women signifying the greatness of God which has been shown to all religious people.

In marriage there are many Shari'a values that Allah instills in them from the beginning when they meet, it is prescribed to see or Nadzhroh, then the marriage contract is prescribed, then walimah and so on, until in Islam in solving a household problem, Thalaq is hinted at in solving household problems and if it can be negotiated for the union or the return of the marriage relationship, Allah has prescribed Rujuk in it

Allah prescribes reconciliation to return to husband and wife life because sometimes thalᾱq can occur in a state of anger and encouragement, it can occur without thinking about and predicting in advance the consequences of the divorce, and what will happen afterwards from loss or damage .

Referring is a right for the husband only, as thalᾱq. Among the virtues of Islam is the permissibility of divorce and the permissibility of reconciliation. When souls contradict each other and it is not possible to continue married life, thalᾱq is permissible, when relations have improved and water has returned to its track, reconciliation is permissible. To Allah is all praise and bounty.1

Referring comes from Arabic, the word reference comes from the word ؛ raja'a-yarji'u-ruju'an which means to return, and return.[2]

While the definition according to al Mahalli is;

الرد الى النكاح من طلاق غير بائن في العدة

[1] Muhammad Bin At-Tuwaijiri Ibrahim, *Mukhtashar Al-Fiqhi Al-Islami*, cetakan ke-2 (Yogyakarta: Ghani Pressindo, 2012).
[2] Abdul Rahman Ghozali, *Fiqh Munakahat*, Cetakan ke-6 (Jakarta: Kencana, 2014).

It means; Returning to a marital relationship from a divorce that is not bα'in, during the iddah period, as marriage is an act ordered by religion, reconciliation after the divorce is also a religious order.[3]

This can be seen in the word of Allah SWT

وَاِذَا طَلَّقْتُمُ النِّسَآءَ فَبَلَغْنَ اَجَلَهُنَّ فَاَمْسِكُوْهُنَّ بِمَعْرُوْفٍ اَوْ سَرِّحُوْهُنَّ بِمَعْرُوْفٍۗ

It means; And if you divorce your wives, then they are nearing the end of their iddah period, then refer to them in a good way or divorce them in a good way…[4]

Referral has two types, namely referral from thalᾱq raj'i, and reference from thalᾱq bᾱ'in. Whereas the reference from thalᾱq raj'i is done by saying according to the fuqaha's agreement. This can be done with actions, namely by doing intercourse and other actions. It is not obligatory to provide a dowry or the presence of a guardian in reference to thalᾱq raj'i. Nor does it depend on the wife's permission, or anyone other than the wife. When the wife's iddah period is over, refer the husband to the wife as if referring to thalᾱq bᾱ'in.

In reconciliation under these conditions, the husband needs what he needs to build a new marriage, which consists of the wife's consent, giving a dowry for her, and according to Jumhur's guardian agreement which requires that there must be a guardian contrary to the Hanafi school of thought.

The jurists have agreed that it is permissible to make a new contract for a wife who has been thalᾱq with thalᾱq bᾱ'in, either during her iddah period, or after. There are also different understandings of the Ulama on the law of referring to deeds.

According to jumhur fuqaha, reconciliation occurs by saying or by deed. Meanwhile, according to Imam Hanafi and Hambali, reconciliation can occur by mixing or having intercourse with the wife and there is no need for intention.

METODE PENELITIAN

The approach used in this study is a qualitative approach. Bogdan and Taylor in Moeloeng define a qualitative approach as a research procedure that produces descriptive data in the form of written or spoken words from people and observable behavior.[5] The type of research approach is descriptive. Descriptive research is research that is directed

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[3] Amir Syarifuddin, *Garis- Garis Besar Fiqh*, Cetakan Ke-4 (Jakarta: Kencana, 2013).

[4] Kementrian Agama RI, *Al-Qur'an Dan Tafsirnya*, Jilid 1 (Jakarta: Lentera Abadi, 2013).

[5] Iskandar, *Metodologi Penelitian Kualitatif* (Jakarta: Gaung Persada Press, 2009).

at providing symptoms, facts, or events in a systematic and accurate manner, regarding the characteristics of a particular population or area.[6]

The reason researchers use qualitative methods is because researchers want to understand in depth the problems of the phenomena, events or symptoms being studied by focusing more on a complete picture of the phenomenon being studied so that a deep understanding of the phenomenon is obtained to then produce a theory.[7] And seen from the point of view of the region, qualitative research is divided into two things. First, library research, second, field research. Bibliographical research relies almost entirely on data from libraries, so this research is more popularly known as library descriptive qualitative research or bibliography, and some call it non-reactive research. because he fully relies on theoretical data and documentation in the library. Meanwhile, field research relies on data in the field (social setting) obtained through information and documentation data relating to the research subject (emic).[8]

As for this research, when viewed from its type, it includes research (library research), namely research conducted through library materials or library literature as written sources. More specifically, it is called normative research in Islamic law, it is called normative because it is doctrinal legal research, it is also referred to as literature research or document study. This research has more to do with secondary data in the library, which is explored by examining references that are relevant and related to the problem under study.[9]

In this study, the type of research used was descriptive qualitative research or bibliographical research, because it relied on documentation in the form of advertisements on television media, and used theories from books as literature. The object of research in this study are books/books that contain da'wah messages.

RESULTS AND DISCUSSION

1. Refer According to Imam Hanafi

[6]Nurul Zuriah, *Metodologi Penelitian Sosial Dan Pendidikan* (Jakarta: Bumi Aksara, 2009).
[7]Mudjia Rahardjo, "Jurnal Metodologi Penelitian Program Doktor Manajemen Pendidikan Islam," *Pasca Sarjana UIN Maliki*, 2010.
[8]Mukhtar, *Metode Praktis Penelitian Deskriptif Kualitatif* (Jakarta: REFERENSI (GP. Press Group), 2013).
[9]Bambang Soenggono, *Metode Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 1990).

Ibnu Rusydi argues that reconciliation in the Hanafi Madzhab is valid if during the iddah period either with a blessing in the form of sorih (using the word reject) even though there is no intention, or in a kinayah (innuendo) which requires intention such as a parting sentence, or with an act done by the husband in a way to conjure a wife who was thalak raj'i, whether he intends to reconcile with that jimak or not.[10]

وأما أبو حنيفة فأجاز الرجعية بالوطء إذا نوى بذلك النية ودون النية

Meaning: As for Imam Hanafi, it is permissible for reconciliation by means of mutual consent, accompanied by intention or not.

Because Imam Hanafi reasoned with the word of Allah SWT:

وبعؤلتهن احق بردهن[١١]

Meaning: "And her husbands have the right to refer to her in that waiting period"

In the sentence ((وبعولتهن احق بردهن) it means their husbands, Imam Hanafi ijtihad said that in this verse they are still called husbands and it is clear that the husband is entitled and everything is lawful towards his wife. So in the verse above it means that they are still husband and wife again. That's why legally reconcile by mixing, touching and kissing, and things like that, which are carried out by men who refuse and women who are rejected, provided that all this is accompanied by lust. sleeping, forgetting, forced and crazy. For example, a husband divorces his wife, then he is stricken with madness, then he has intercourse with her before the end of her iddah period, then the law is valid.[12]

In the verse above it is not determined whether by word or by deed. So the law of witnessing in making reconciliation is only sunnah, not obligatory, the qarinah is the agreement of the scholars (ijma') that witnessing talaq when divorce is not obligatory, so should when reconciliation, especially this reconciliation means continuing the old marriage, so there is no need for a guardian and no need to please the wife (the person being referred to). Interfering with a wife who is in iddah raj'iyah

[10] Ibnu Rusydi, *Bidayatul Mujtahid Wa Nihayatul Muqtashid* (Ibnu Hazm, n.d.).
[11] Al-Qu'ran Al-Karim, *AL-Baqarah: 228, Juz 2* (Jakim Malaysia: Pustakaan Darul Salam, 2007).
[12] Muhammad Mughniyyah Jawad, *Terjemah Al-Fiqh A'la al-Madzhibul Khomsah* (Jakarta: Lentera, 2008).

is lawful for a husband who divorces her, according to Imam Hanafi, basically because in that verse he is still called a husband.

عن سعيد بن جبير عن ابن عمر أنه طلق إمراته وهي حائض فردها عليه رسول الله صلى الله عليه وسلم حتى طلقها وهي طاهر, (رواه النسائي).[١٣]

Artinya: "Dari Said ibnu Jubair dari Ibnu Umar ra. berkata, bahwa ia telah menceraikan istrinya yang sedang haid, maka Rasulullah SWA. menyuruhnya merujuki istrinya, hingga menceraikannya lagi dalam keadaan suci".

Meaning: "From Said ibn Jubair from Ibn Umar ra. said, that he had divorced his wife who was menstruating, the Messenger of Allah ordered him to refer to his wife, to divorce her again in a holy state.[14]

2. Refer According to Imam Hambali bin Hambal

Syeh Wahbah Azzuhali said in his book entitled: Alfiqhul Islam Waadillatuh: Referring to the Madzhab Hambali bin Hambal and ijma 'ulama, it is valid to do so if during the iddah period due to the argument against the word of Allah above, there is reconciliation with saying sorih (obviously) not with kinayah (innuendo) because jima's halal reference is to the wife who is being referred to, and the act (having intercourse), with the husband having intercourse with the person being referred to (his wife), even though without intention. Because in the Hambali bin Hambal talak school, it is like buying and selling where ownership is lost, and having intercourse with the person being referred is a prevention against loss of ownership, and reconciliation is also invalid by holding the body, touching the genitals of the person being referred to, kissing even with passion, because of that not called (استمتاع) having fun (menjima'nya) because jima' is clear on the return of the husband to his wife.[15]

Referrals do not need the blessing of the person being referred to (wife), there is no need to inform the person being referred to, that he has been referred, and witnesses are not required. Scholars agree on its sunnah, because reconciliation continues a broken marriage, not starting a new marriage, this sunnah is one of the strong opinions in the Hambali bin Hambal Madzhab because he is of the opinion that in his other words the law of witnesses in reconciliation is obligatory, witnesses

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[13] An-Nasa'i, "Sunan An-Nasai," *Maktabah Syamilah*, n.d.

[14] Az-Zuhaili, *Fiqih Islam Wa Adillatuhu Jilid 9: Terjemahan Abdul Hayyie Al-Kattani*.

[15] Wahbah Az-Zuhaili, *Fiqih Islam Wa Adillatuhu Jilid 7* (Jakarta: Gema Insani, 2011).

in reconciliation are obligatory. avoid the incarnation of the wife who has been referred.[16]

3. What are the differences and similarities of reference according to Imam Hanafi and Imam Hambali bin Hambal

a) The difference between the two is not too much:
   1) Imam Hanafi legalizes reconciliation by touching, touching, kissing or looking at her private parts, while Imam Hambali does not legalize this.
   2) Imam Hanafi legalizes reconciliation by coercion, forgetfulness, or madness, while Imam Hambali's reconciliation is invalid unless both are intelligent.
   3) Witnesses are obligatory according to one opinion of Imam Hambali while Imam Hanafi is sunnah.

b) There are many similarities for both of them and each of them uses the same proposition between them:
   1) Valid reconciliation is done with jima' (coitus) even without intention.
   2) The sunnah of the witness according to one of the strong opinions of Imam Hambali.
   3) Valid referrals are made if the person being referred is still in his iddah period.

For more details about the differences and similarities between the two see the table as follows:

Table 1. Differences and Similarities of Reference According to Imam Hanafi and Imam Hambali bin Hambal

NO	Imam Hanafi	Imam Hambali bin Hambal
1	So reconcile by touching, touching, kissing or looking at her vagina	Invalid
2	Refer lawfully by coercion, forget, or mad	Illegal, both must be reasonable (conscious)
3	Disunahkan adanya saksi	In this case there are two opinions : 1. It is sunnah to have a strong witness opinion

[16]Az-Zuhaili.

		2. There must be a witness
4	A valid referral is made if the person being referred is in the iddah period	A valid referral is made if the person being referred is in the iddah period
5	Valid reconciliation is done with jima' even without intention	Valid reconciliation is done with jima' even without intention

CONCLUSION

Hanafi and Hambali bin Hambal opinions have the same differences and similarities,

1. The Hanafi opinion is of the view that reconciliation is valid if the wife is in the iddah period either referring to her with a sorih (obvious) without intention or in the form of kinayah (innuendo) must be with intention and it is also legal to refer to the wife with an act like jima' with intention or no, and acts that lead to jima' such as kissing, holding, groping, looking at the vagina of the person being referred to (the wife) whether she does it knowingly or by force. In this case it is not required to have witnesses, but it is sunnah to bring them because of fears that the wife's incarnation has already been referred, it is not required that the person being referred is willing and the wife's knowledge that she has been referred, because the husband's rights refer.
2. The Hambali opinion is of the view that reconciliation is valid if the wife is still in her iddah period, whether she refers to her by saying sorih (obviously) without and not by saying kinayah (innuendo) because reconciliation is because jima' (coitus) is lawful or by jima' which carried out by a husband against his wife who is referred to with intention or without intention because it is legalized in his school of thought, and it is not valid to reconcile by kissing or touching his vagina, touching even with lust, and it is promulgated that there is a witness in one of his strong opinions, according to another opinion the law brings Witnesses are obligatory, it is not required that the wife referred to be willing, nor does it have to be the knowledge of the person referred to.

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